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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF OHIO

EASTERN DIVISION

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SARAH ARONSON, M.D., Plaintiff,	)	
v.	)	CASE NO. 1:10-CV-00372
	)	JUDGE BOYKO
UNIVERSITY HOSPITALS OF CLEVELAND, Defendant.	)	

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DEPOSITION OF HOWARD NEARMAN, M.D.

Wednesday, December 22, 2010

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The deposition of HOWARD NEARMAN, M.D., a Witness herein, taken by the Plaintiff as if upon examination under the Ohio Rules of Civil Procedure, before me, Mary C. Peck, a Stenographic Reporter and Notary Public within and for the State of Ohio, at the offices of Gordillo & Gordillo, LLC, 1370 Ontario Street, Suite 2000, Cleveland, Ohio, commencing at 8:30 a.m., the day and date above set forth.

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APPEARANCES:
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ALSO PRESENT

Sarah Aronson, M.D.

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HOWARD NEARMAN, M.D.

called by the Plaintiff for the purpose of examination, as provided by the Ohio Rules of Civil Procedure, being by me first duly sworn, as hereinafter certified, deposed and said as follows:

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EXAMINATION OF

HOWARD NEARMAN, M.D.

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BY MR. GORDILLO:

Q Good morning.

A Good morning.

Q Would you please state your full name for the record?

A Howard Sloman Nearman, N-e-a-r-m-a-n.

Q And during our deposition today, how would you prefer to have me address you?

A Howard is fine.

Q Okay. Howard, my name is Greg Gordillo. We met just a few minutes ago, and I represent Sarah Aronson in her lawsuit currently against University Hospitals of Cleveland.

We're here to take your deposition in connection with that lawsuit.

Have you ever had your deposition taken before?

A Yes.

Q All right. Have you testified as an expert in any kind of litigation before?

A Yes.

Q I don't want to know about that, okay?

A Then don't ask.

Q But I'm going to ask you, other than expert testimony, have you been deposed before?

A Yes.

Q Okay. Can you tell me what kind of cases or how many times -- strike that.

How many times have you been deposed, other than times you've been deposed as an expert?

A One.

Q What was the nature of the case in which you were deposed?

A Malpractice suit against me.

Q All right. So I'm sure that you're somewhat familiar with the procession. I just want to make sure it's clear you understand how I expect things to go.

The first thing to know is I don't think we're going to be here too long today, but at any time if you feel the need for a break, just be sure to ask me for that and I'll be happy to give that to you. The only thing that I'll ask is that if there's a question pending, you answer the question before we

take a break, okay?

A Sure.

Q It's also important that when you respond to my questions affirmatively or negatively, you use the words yes or no. Words like mm-hmm or uh-huh don't get translated so well by our court reporter when we have to read what those responses are.

A Sure.

Q What's your home address?

A 32430 Pinebrook Lane, Pepper Pike 44124.

Q Does anyone else live there with you?

A My wife, and for the next week, or so, my son.

Q Okay. What's your wife's name?

A Barbara.

Q You are currently employed?

A Correct.

Q Who is your employer?

A University Hospital Medical Group.

Q University Hospital Medical Group.

Who comprises University Hospitals Medical Group?

A Meaning what? Meaning who are the employees or who are the employers?

Q Is it a practice group?

A It is essentially a group of the physicians who practice at University Hospitals Case Medical Center,

so I guess it would be a multi-specialty practice group.

Q When I say who comprises, is it fair to characterize it as a group formed by practicing physicians?

A Yes, sir.

Q And does the group then provide services to University Hospital?

A Provides services to their patients. I suppose some of them provide services to the hospital entity itself, as well.

Q Does UH Med Group have a contract to perform services with the hospital?

A I'm not aware of such.

Q And is that your only employer?

A No.

Q Who else employs you?

A Case Western Reserve University.

Q As an employee of University Hospitals Medical Group, what do you do?

A I am the chairman of the Department of Anesthesiology. I'm also the anesthesiologist in chief for the hospital system, and as such, I run administrative -- I'm the administrative director for the Department of Anesthesiology at Case Medical Center and have administrative function over the

several other anesthesia entities within the University Hospitals Health System. I also see patients, do anesthesia, and spend time in the intensive care unit.

Q Okay. And as an employee of Case Western Reserve University, what do you do?

A I'm responsible for the Department of Anesthesiology that is housed at the Medical School for providing instruction to the medical students there.

Q Are you chair of that department?

A Correct.

Q And when you were speaking about your role in connection with University Hospitals Medical Group and you talked about being chair of anesthesia, that's for University Hospitals, correct?

A Correct. They're pretty much one and the same, as I understand it, with the exception of, I think, Emergency Medicine. The chairs at the department -- at the School of Medicine are housed at University Hospitals Case Medical Center. So if you're chair of Pathology at Case, you're chair of Pathology in the School of Medicine, et cetera, et cetera.

Q All right. How long have you been the chair of anesthesiology?

A Ten years.

Q And you're Board certified in anesthesia?
A Correct.
Q Do you have responsibilities for the Anesthesia Residency Program at UH Case?
A How would you define responsibilities?
Q You've heard the word responsibilities before. What do you understand the word responsibilities to mean?
A Am I directly responsible or am I indirectly responsible?
Q Let's talk first about direct responsibility.
A Direct responsibility for the Anesthesia Residency Program lies with the residency program directors.

When I first started, the chair and the program director were one and the same, and they were like that pretty much every program.

Since then, the amount of work that is required to both run a department and run a residency is such that in almost every major program, there are separate program directors that the chair delegates responsibility to a certain extent to.

In the end, yes. I mean, as the department chair, it is my responsibility.

Q Okay. And at UH, there have been separate program directors since, let's say, October of 2006, at least?

A Sure.
Q And between October of 2006 and August of 2009, who was the program director or directors?
A They're co-directors. They function as co-directors, and those were Matthew Norcia and Dave Wallace.
Q Is it a fair understanding to say that they have direct responsibility for the Residency Program at UH and that they report to you?
A I think one can say that, yes.
Q Other than the co-directors reporting to you, do you have other indirect responsibilities for the Anesthesia Residency Program?
A They report to me. Clearly if there are issues, I get consulted, informed.

I'm not sure what other responsibilities you're asking about. I mean, they fill out forms for the Boards. They fill out the forms for making sure that people register to take the Boards. If they're eligible, they fill out all the reporting requirements that the American Board of Anesthesia requires. They run the evaluation system. I do not have any other direct responsibilities other than through them.

Q Okay. I think I understood your testimony before that you were making a distinction between direct

responsibilities and indirect responsibilities that you have for the program.

A Correct.

Q And as I understood your testimony, your direct responsibilities were essentially to supervise Norcia and Wallace; is that correct?

A Correct.

Q Do you have any other direct responsibilities for the program?

A Not that I can think of at this point.

Q And your earlier testimony suggested -- let me make sure I'm clear about this -- that you have indirect responsibilities for the program; is that right?

A In the sense that I'm supervising them, correct.

Q And what do you consider those indirect responsibilities -- that's what I'm getting at -- if any, other than supervising Doctors Wallace and Norcia?

A I'm not sure I understand what the delineation is. I mean, if you would like to give me some specific examples, I can answer to that. But again, they sort of set the rules in consultation with me, perhaps, and they sort of carry out the daily activities of the Residency Program.

Q Okay. I guess we're like ships passing in the night

here.

A Sure.

Q I'm trying to understand the distinctions you're making between the direct and indirect responsibilities. My purpose here is to get a full understanding of the scope of your responsibilities.

A I explained to you the best I can what I feel my responsibilities are. If you'd like to pose back to me questions where you don't have an understanding, I can hone in on those, but I'm afraid I can't express any better than I've just done.

Q Is it fair to say you feel like you have described the totality of your responsibilities, whether direct or indirect, for the Residency Program?

A Yes.

Q Will you describe for me what your responsibilities are as chair of the Anesthesia Department at UH, apart from the Resident Program?

A How long do you want this deposition to last?

Q Well, why don't you give me the basic job description to start?

A I'm responsible for the day-to-day activities of function of the Anesthesia Department. I'm responsible for strategic planning. I'm responsible for quality assurance activities. I'm responsible

for hiring and dismissing Anesthesia faculty. I have indirect responsibilities over the anesthetists who are employed at the hospital. I have responsibilities for the operating rooms for the Post Anesthesia Care Unit, for the Intensive Care Units that we direct, and for Pain Management activities that are part of the Department of Anesthesiology. I have responsibilities to make sure that we are in compliance with governmental and other regulatory agencies. I have responsibilities towards fixing a budget and reviewing the financial activities of the department. And then I have a coffee break.

I think that pretty much encompasses most of what I do in broad, sweeping terms.

Q Do your responsibilities include any participation in determining the compensation for anesthesiologists?

A Yes.

Q Other than those physicians going through the Residency Program, are all of the anesthesiologists in fact physicians who have completed Anesthesia Residency Programs?

A Yes.

Q And at UH, are all of the anesthesiologists Board certified?

A There is one that is not.

Q Who is that?
A Jana Kirilcuk, and there are one, two -- there are three that are not certified yet but are in the process of.
Q Who are those three?
A They are Katya Chiong, C-h-i-o-n-g, Soozan, S-o-o-z-a-n, Abouhassan, A-b-o-u-h-a-s-s-a-n, and Sylvia Ashour, A-s-h-o-u-r.
Q Are you aware of the compensation that each of those physicians are paid by UH?
A Yes.
Q Of those physicians -- I don't want you to identify the physician for me because I don't really care, but I'd like you to tell me what the amount of the lowest compensation package is of those four physicians.
A On a full-time equivalence, because two of those people do not work full time.
Q Yes. Full-time equivalence.
A So you want FTE.
Q Yes.
A In order for me to tell you that, I have to give you a little bit of an idea of how we're paid.
Q Okay.
A We are paid with a base salary, and then the other part of the compensation comes from clinical

incentives.

The clinical incentives are comprised of a small percent of what you bill for. And I'm talking about maybe one and a half percent. And they also are comprised of what is called over practice, which is a fixed amount that you get paid for by staying after a certain time of the day. So to encourage faculty to stay and finish up cases, you get rewarded for staying.

I think the lowest compensation full-time equivalent would be 191 base plus whatever the incentive package is. And people can earn anywhere from 20,000 a year incentives to 100,000 a year incentives, depending on how much they want to work.

Q And among the four that we're talking about, what's the highest compensation?

A I don't have those memorized.

Q The compensation that you just described, are we talking about what the current compensation structure is?

A Current -- that includes -- we got a little bit of an upward adjustment for next year based upon the national statistics. I do not determine the overall level. That is done through consultants that the hospital has who looks at compensation that is

standard throughout the country and tries to place us somewhere around the 50th percentile.

Q Is the compensation that you -- the compensation rate that you just described significantly different than what was in place between March of 2009 and August of 2009?

A It's about 10,000 higher, the numbers I just gave you, than what was in place back then.

Q Then the numbers would be 10,000 lower, right?

A That's correct.

If it helps, I can tell you about what the average clinical practice and over practice is.

Q That was my next question.

A I thought so.

The average runs about $50,000.

Q The clinical incentives?

A The clinical incentives run about $50,000. The ones that are even up on the higher are people that take extra call on weekends or take extra call at the community hospitals at night, cover the beeper call in addition to their regularly assigned call at the main campus.

Q And are the physicians expected to devote their entire practice to UH?

A There are physicians who -- no. It is allowed to

practice elsewhere assuming that as long as I know about it, the Medical Group knows about it, and their malpractice is covered and that it does not interfere with their other duties. So there are people who may take a weeks vacation and go someplace to moonlight for that week there. They clear that with me. They clear that with our risk insurance management group and they get that malpractice, and whatever it is. They're allowed to do that. It's their vacation. I can't dictate what they do on vacation time.

Q You know Doctor Johnson?

A Yes, I do.

Q Doctor Johnson worked under your supervision in the department; is that right?

A Correct.

Q And is Doctor Johnson still employed?

A No, he is not.

Q When did his employment with UH end?

A I don't know exactly. About a year ago, I would guess, maybe a little bit more.

Q Do you know why Doctor Johnson's employment ended?

A Yes.

Q Why?

A There were a number of factors, one of which was the fact that he did not have Boards in critical care.

He was not an anesthesiologist. He was trained as a surgeon. He never took his surgical Boards. He did do a critical care fellowship, and as such, he worked as an intensivist. There was some issues with our program as far as having Board certified or Board eligible people teaching residents. Part of it was that he had to be at a facility, therefore, that did not have residents going through it because he was found -- he was one of the specific people named in one of our citations for our residency review about non-boarded physicians teaching residents. There was a limit to the number of places where we could then -- we had ICUs that did not have residents in them, and things didn't work out at one of those ICUs so his employment was terminated.

Q When you say things didn't work out, what do you mean?

A He had some issues there that there was some allegations about his availability, responsiveness, and medical record keeping, and they did not renew his contract to work there.

Q When did those issues arise?

A Shortly before he was terminated. I don't recall exactly the dates.

Q Before August of 2009?

A Maybe. I don't remember.
Q Were you aware of whether the residents had complained about Doctor Johnson?
A Yes.
Q What did you know about complaints made by residents concerning Doctor Johnson?
A I know the residents -- there was some complaints about his timeliness for rounds as far as showing up at a certain hour, and there was a complaint or two about his responsiveness, which I alluded to before that.

MR. GORDILLO: Let me step out for one second.

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(Thereupon, a recess was had.)

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Q (By Mr. Gordillo) Would you describe for me what you understand to be the program director's responsibilities for the Residency Program?
A They are responsible for -- starting at the beginning, they're responsible for screening applications, inviting prospective resident applicants for interviews, for conducting the evaluations of those -- of the residents, and then turning in a final match list for the program,

responsible for maintaining the accreditation of the Residency Program, preparing for the Residency Review Committee periodic inspection. They're responsible for filing periodic reports to the ACGME, the ABA. They're responsible overall for the general education of the residents, both didactic and clinical.

I think that's a fairly complete listing. I may have missed something, but I think that's a fairly complete listing.

Q Okay.

A They're responsible for the resident budget from the hospital. We get a certain amount of money each year from the hospital, determining how we spend it on the residents, evaluation and feedback to the residents. Okay. I'm done.

Q Among Doctor Wallace's responsibilities were then to provide evaluation and feedback to Sarah Aronson when she was a resident; is that correct?

A Both he and Doctor Norcia would. I mean, I don't know how they split up who each gives feedback to who, whether it was a joint effort.

Q Did you know that at some point Doctor Wallace was removed from that role?

A I know that there were some points where it was felt that he wouldn't be the ideal person to give her

feedback.

Q When did you learn that?

A When did I learn that?

Q Yes.

A I think I was part of that decision process.

Q Okay. Can you tell me what that process was?

A As best I can recall, the process sort of went to the fact that the interactions between Doctor Aronson and Doctor Wallace, in my opinion from the data I can gather, had taken on more of an emotional-type of atmosphere than perhaps an objective discussion, and I felt that perhaps at some point that perhaps Doctor Wallace wasn't the best person to be involved in the process.

Q Were you ultimately the person that decided to remove him from the role?

A I don't know if removal from the role is -- I felt that -- it wasn't an isolation or removal from the role. It was just I didn't think he was the best person to provide her with feedback and counseling through the process through the discussions that we had. There wasn't any -- to the best of my knowledge, there was no, you're not supposed to see her again or I forbid you from interacting with her. I think that the issues that Sarah brought to the

table were best handled by people other than David, and that's my understanding of how that went.

Q Is it fair then to characterize it as limiting his role?

A I think that's more fair than a restriction, yes.

Q Okay. I'm not trying to mischaracterize what you're saying.

A We're dealing with semantics. I'm trying to say it wasn't as harsh of a process, my impression, of what you were trying to paint.

Q Who else, if anyone, was involved in that process?

A Process of?

Q Determining what Doctor Wallace's role would be with respect to Sarah Aronson.

A I may have had discussions with Doctor Norcia about it. I may have had discussions with Doctor Shuck about it. I don't recall specifically.

Q Do you recall the gist of any conversations you had about the matter with Doctor Norcia?

A No, sir.

Q And do you recall the gist of any conversations you may have had about the matter with Doctor Shuck?

A Nothing more than what I just described.

Q And again, I don't mean to mischaracterize, so feel free to correct me if I misstate this --

A I sure will.
Q -- but what I understood you to say was that the decision was based on the feeling that perhaps some of the interactions had become more emotional rather than objective; is that fair?
A Correct.
Q What was it that led you to believe that the interactions were more emotional rather than objective?
A It's hard for me to give you specifics a year and a half later. I don't recall, other than it was a general feeling that -- it was a general feeling that David was not, you know, totally isolating himself from the situation and able not to -- we all have feelings and we all have emotions, and we don't -- everything we approach and every decision we make is based upon both subjectivity and objectivity. I guess I had felt that the objectivity was lagging a little behind the subjectivity in those dealings.
Q When you say he wasn't totally isolating from the situation, what situation are you talking about?
A The situation of Sarah's performance.
Q And in what manner should he have been -- what do you mean by isolating?
A Isolation to me means that you are able to wall off

your emotions and make decisions based totally upon objective criteria. Clearly that's not possible in most areas of life, and when you're working with somebody in an operating room, you have opinions that are both subjective and objective. Maybe some of your subjectivity colors your objectivity and maybe not.

It was my feeling that because this was an emotionally charged issue for everybody involved, I wanted to try to keep it as objective as possible, and I felt perhaps that having David in a restrictive role, at whatever point that was decided, would be better off as far as our looking at the whole process.

Q Did you have some indication of what was causing Doctor Wallace to be more emotional than objective?

A I think that Doctor Wallace had very strong feelings that Sarah was not going to be a competent anesthesiologist, and I think that his feelings were based upon his interactions and performance and some feedback that he got from other attendings and other residents, and yet there were aspects of Sarah's performance and evaluations that were good. And I wanted to try to strike a fair balance, as fair a balance as I possibly could among those, and I felt

that David was not looking at everything as objective as he could based upon his own personal feelings about her performance. So I was trying to restore what I thought to be balance.

Q Did you discuss with Doctor Wallace your belief that he was not totally isolating from the situation?

A We discussed -- I'm not sure I would put it in those exact words, but something along those lines, yes.

Q Tell me about those discussions. What did you say?

A I just did.

Q What did you say specifically to him?

A I said specifically something to the effect of what we just said, that I thought that his view was the view of a single faculty member, albeit the program director, but his own interactions with her as a single faculty member, just like other single faculty members, and I wanted to make sure that we were looking at this, again, as fairly as we possibly could. I guess that was the gist of the conversation. I don't remember specifics.

Q How did he respond?

A I don't remember.

Q Did you have the conversation with him with a mindset such that his response was going to make a difference in terms of what you were going to recommend his role

be?
A No.
Q What information had you gathered to lead you to the decision that his role should change?
A It was based upon my thought processes at the time. I can't tell you anything other than what I already told you.
Q Well, did you speak to other physicians about Sarah's performance?
A Yes.
Q Which physicians did you speak to?
A I can't tell you specific names. I don't remember.
Q Did you have personal observation of her performance?
A At some point I did. I don't think I -- I do not remember working with Sarah in the operating room. I'm sure I did in the Intensive Care Unit.
Q Were you relying on your personal observations of her performance when you were having these conversations with Doctor Wallace about his evaluation of her?
A Not particularly.
Q Were you relying on your knowledge gathered from your conversations with other physicians when you were talking to Doctor Wallace?
A To some extent, I'm sure I did.
Q Did you agree with Doctor Wallace with respect to his

strong feelings about her performance?

A That's a broad question.

Q Well, you testified that he had strong feelings about her performance.

A Yes.

Q You understood what those strong feelings were, correct?

A I think some of the things that he said, I agreed with. Some of the things that he said, I probably didn't agree with.

Q What were the things that he said that you agreed with?

A You know, I don't recall specifics of the conversation at this point.

Q And do you recall specifics of things he said that you did not agree with?

A Again, I don't recall specifics. I think that the best way to characterize it is there was a number of broad, sweeping comments about her performance and what his thoughts were about her ability to complete the program satisfactorily versus not, and I think that we had some general discussions about that, and I recall agreeing with some of the things he said, and other things, I didn't agree with.

I mean, it was a conversation between two

professionals who were trying to evaluate somebody on a spectrum that really there's no distinct cutoff or score. There's not a number that flashes up there. There's generally a type of feeling and a type of looking at certain criteria that differs from person to person.

Q Do you recall approximately when you made this decision regarding his role with respect to Sarah Aronson?

A Do I remember it now when it was?

Q Yes.

A No, sir. I don't remember specifically.

Q Did you know that a meeting was held with Sarah Aronson by Doctors Norcia and Wallace on June 4th of 2009, during which meeting Doctor Wallace expressed his belief that Sarah Aronson could not satisfactorily complete her Residency Program?

A I was made aware of that, correct.

Q Did you agree with that assessment?

A To the best of my recollection, I think that that -- that the assessment was made by Doctor Wallace and Norcia. I was consulted about that and I did not disagree with that, so if I didn't disagree, then I agreed.

Q So as of June 4th, you agreed that she was not likely

to successfully complete the Residency Program; is that accurate?

A June 4th?

Q Of 2009.

A I know that there was discussion about that. I don't recall specifically whether -- I remember when they had met with her to extend the training. That was the issue. I don't recall whether that was before the June 4th meeting. Is that correct? I'm trying to --

Q Let me refresh your memory. Her training was officially extended January 7th of 2009.

A Okay.

Q That's when she received the letter saying that her training was going to be extended.

A Okay.

Q And she completed the program not later than August 31, 2009.

A So the meeting in June was two months before she completed the program?

Q That's right.

A I was not -- I know that there was concern about whether she would be able to complete it. I don't recall stating that she was not going to be able to complete it at that point. I mean, I don't -- I

mean, I was not aware that that was a definitive statement said in that meeting.

Q So let's clear something up, because I think perhaps you had some confusion about dates, and I had asked you earlier whether you agreed with the assessment on June 4, 2009 by Doctor Wallace that Sarah Aronson was not likely to successfully complete the program, and you answered that you did agree with that.

A On that date, I think I had concerns about whether Sarah Aronson was going to successfully complete the program. I did not necessarily agree with Doctor Wallace's assessment that there was no way that she was going to finish the program.

Q Okay. And what were the basis of your concerns at that time?

A The same as the basis for Doctor Wallace's concern and other evaluations that she had had up to that point, and the fact that there was -- again, the fact that there seemed to be a mixed bag of evaluations concerning performance.

Q Did you also believe that she had time to demonstration between June 4th of 2009 and the end of August 2009 that she could successfully complete the program?

A I have no opinion on that. That's the kind of

decisions that were left up to the residency directors.

Q So you had an opinion about whether she was -- as of June 4th -- whether she could successfully complete or whether she was likely to successfully complete, and no opinion of whether she could --

A Let me put this in frame of reference. I did not go over every evaluation that Sarah Aronson was given. I did not go over the timeframe of these evaluations, progress or not. I relied upon Doctor Norcia and Doctor Wallace to give me information about that. They were the best judges of her progress, or lack thereof, about her abilities, or lack thereof, and they were the ones who were going to make that decision. They consulted me on that.

Now, you know, was I specifically asked is eight weeks enough time for Sarah to demonstrate that she could complete with success the program? I was not asked that or I don't remember being asked that, so I don't have an opinion on that answer.

I know that she was walking the threshold. I know there were concerns about it at that date. Did I have a timetable upon which she either completed or not completed? Not in my mind.

Q Did you discuss with either Doctor Wallace or Doctor

Norcia whether they had provided Sarah Aronson with any feedback about performance problems between January of 2009 and June 4th of 2009?

A I do recall some discussions we had about that and that there was some issues that they had not gotten back to Sarah for -- I don't recall the exact amount of time, but a specific period that I had felt that it would have been more helpful had they been able to give her feedback on her performance over that period of time. I don't know exactly what that was.

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(Thereupon, Exhibit 1 was marked for the purpose of identification.)

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Q (By Mr. Gordillo) Howard, I'm going to hand you a document that has been marked as Exhibit 1, and as we go through your deposition, I'll probably hand you documents a number of times. Every time I do it, I'd like you to make sure you take all the time you'd like to look over the document and let me know when you've had an adequate opportunity to review the document.

A Okay.

Q Do you recognize the document?

A Yes, I do.

Q And this is the letter sent to Doctor Aronson to notify her that her training was going to be extended, correct?
A Yes, sir.
Q In the next to last paragraph, she is informed that she will be required to remediate for an additional six-month period. Do you see that?
A Mm-hmm.
Q And then in the final paragraph, she's asked to contact Christine Adamovich to set up a time to meet and discuss the remedial program plan. Do you see that?
A Yes.
Q Remediation is a specific term in the context of the UH Residency Program, correct?
A I guess. I don't know. I mean, I haven't read the book or I don't remember reading specifically that word. I'm sure it must be there. I'll take your word for it.
Q Okay. It's there.
Are you familiar with the process that's involved when a resident is placed in remediation?
A In generalities.
Q Okay. Are you aware of whether a written remediation plan is required to be given to the resident?

A I'm not aware of that. There may be. I just don't know.
Q Do you know whether a written remediation plan was ever given to Sarah Aronson?
A I'm not aware of one.
Q Did you ever ask Doctor Wallace or Doctor Norcia whether a written remediation plan was ever given to Sarah Aronson?
A No, I did not.
Q Did you ever discuss with either Doctor Wallace or Doctor Norcia any specific remediation program in place for Doctor Aronson beginning after January 7, 2009?
A I may have had the discussion. I don't recall specifics of that.
Q Did anyone inform you that Doctors Wallace and Norcia had indicated to Sarah Aronson that they were going to meet with her on a monthly basis to review her performance?
A I do remember discussion about setting up some appointments to meet with her again. I don't recall the frequency, but I do remember some generality centered around that conversation, correct.
Q Did you know the first time that they met with her after January 7th of 2009 was at the June 4th

meeting?

A My understanding was that she had opportunity for feedback before that, but it was -- I thought that there was some discussions around April, but I can't specifically tell you.

Q Did you ever talk with either Doctor Wallace or Doctor Norcia about whether they had met monthly to give Doctor Aronson feedback about her performance?

A I do recall that they did not meet monthly, and I did have conversations about that.

Q And --

A Probably after the fact.

Q What were the gist of those conversations?

A Pretty much that I thought that there was going to be some sort of regular communication with Sarah, and I had not been aware of such at that point.

Q And what response did you get to that?

A I think that there was some -- there had been some meeting to -- there had been some feedback provided to her, but they had not had a formal meeting, as I recall.

Q Did you have an opportunity to review the letter that is Exhibit 1 before it was sent to Doctor Aronson?

A I don't recall reviewing it. I do recall discussing the general content of it.

Q And you discussed it with whom?
A With Doctors Wallace and Norcia.
Q Okay. When you say you discussed the general content, can you elaborate on that?
A No. I don't know what you're asking me.
Q Well, I want to know as much as you can remember about what you discussed with Doctors Norcia and Wallace about this Exhibit 1.
A Okay. So I remember them feeling that they felt that there was issues with Sarah's performance, that they felt that she needed to have another -- that she was going to get an unsatisfactory for her performance for that past six months.

When they had talked to Sarah, there was an issue with medication that she had been taking that she did not inform them about that could have affected her performance, and they discussed all of the reasons that they were putting in the letter with me, and I said that that sounds reasonable, and that was the gist of my discussion, the best I can recall.

Q They wrote that she had been unable to demonstrate the ability to react to stressful situations.

Do you see that in the second paragraph?
A Yes.
Q Did they discuss with you any examples in which she

was unable to demonstrate the ability to react to stressful situations?

A I don't recall what those situations were. With phraseology like that, I would certainly have asked them for specifics. I'm a hard example kind of person, and I'm sure we had that discussion more or less to a certain extent. I don't recall what the specifics were.

Q Did you ask for any specifics which demonstrated that she had failed to demonstrate her ability to recognize and respond appropriately to significant changes in the anesthetic course?

A Again, we would have had discussions about those. I don't think those were phrases that would have been thrown in without having some examples. So, you know, the gist of the conversation would have been to that effect.

Q But as you sit here today, you can't recall any specific examples that either Doctor Norcia or Doctor Wallace gave you for them to justify their statement that she had failed to demonstrate her ability to recognize and respond appropriately to significant changes in the anesthetic course; is that correct?

A That's correct.

Q And likewise, as you sit here today, you don't recall

any specific examples they gave you to demonstrate how she was unable to react to stressful situations in an appropriate manner?

A Correct.

Q I think you mentioned that one of your responsibilities was hiring in the Department of Anesthesia, correct?

A Yes, sir.

Q When a physician is hired, as in the Department of Anesthesiology, they have to provide a health inventory to UH, correct?

A I don't know what the Human Resources Department does as far as that is concerned. I don't know. I'm sure they probably do. That's never been a factor in -- I've not been made aware of that particular factor. I mean, it's a factor in hiring people. You want to know, but that's just, you know, not something that I generally put on the table when the interview process is going on. I'm aware they do have to do that, and if there are issues that are brought up to that, I guess the HR Department would let me know, but I'm not aware of that.

Q Do you know why you are generally not in the loop, let's say, in on the health inventory?

A Because it's -- you know, I'm not the one hiring

them. UHMG is the one hiring them.

Q So what is your role in hiring?

A I make the decisions on who I would like to have on my faculty and I pass those along to HR to get them a contract. The contract that they sign and all the things that they provide, et cetera, et cetera, is run through UHMGHR.

Q Is it fair to say that you assume that if you recommended a physician for hire, that HR will make sure that the physician is otherwise qualified?

A I would assume -- no, no. The qualifications of the individual are up to me. I mean, I'm the one who makes the decision as far as whether they are clinically qualified to go on faculty or desirable to go on faculty.

If there are issues in that person's past as far as health issues or reasons they cannot perform their duty to the best of their extent, I mean, some of that is self-reported. Some of that is through reference letters, which we'll ask about that, and the other, I would guess, would be through screening by HR. If there's a felony conviction -- I mean, I don't necessarily ask every applicant, have you spent time in jail? If there's something that comes up on their background check, that's done through HR, not

me.

Q Is there any reason you're aware of why a physician who is being hired should believe that they have any obligation to make any health-related disclosures beyond what they disclosed during the health inventory?

A I would want to know if there's any health-related issues that that physician may have that may impair their ability to do the job that they need to do.

Q All right.

A So if they are an alcoholic, then they may show up for work late, or worse, drunk. Or if they are on medications and if they miss a dose, they become psychotic, I need to know that. If they're on drugs that, you know, they need to get to sleep at night and they come in in the morning still not fully awake, alert, and attentive, that the drug has impaired their cognition, I need to know that. If there's epilepsy and they're not compliant with their seizure medication and they're going to have a seizure while they're trying to induce a patient in the OR, I need to know that.

Q Is there any understanding on your part that if a physician who is being hired discloses medication they are taking without knowledge that it's effecting

their performance, that UH is going through a screening process to catch a potential problem?

MR. BIXENSTINE: I'm sorry? Could you read that back?

- - - -

(Thereupon, question read by Notary.)

- - - -

A I'm not depending necessarily on UH to have a pharmacologist in the HR Department to let them know what all the drug effects or side effects are. I would assume that the person who's taking the medication, because it's their body, to be aware of that or be told that by the physician who prescribed that medication.

Again, if there was an opportunity for that medication to affect their performance so it would be clinically significant and potentially harmful for patients, I would need to know that.

Q At the time Doctor Aronson was hired as a resident, she was taking Topamax. Were you aware that she disclosed that in her health inventory?

A I'm not aware one way or the other.

Q Assuming that she did disclose it, are you aware of any other reason that she should have disclosed it to anyone else?

A If she is having -- we're getting to the specifics here. If she was having problems with processing, with reaction, and she was made aware of those performance, then I would think that she would say or put one and one together, well, this is a potential side effect from this medication. Maybe that's what the reason is for my performance issues.

Q But assuming that she wasn't aware of any side effect that was affecting her performance, did she have any reason to disclose the use of Topamax beyond disclosing it in the health inventory?

A I'm not sure I understand the question.

Q Sure.

A If she wasn't aware of the side effect of the drug?

Q Yes. The side effect of the drug affecting her job performance.

A Well, then there's lack of insight as to what her job performance would have been. I mean, if she's been told that she's having issues with reaction time, processing time, and then she doesn't understand that the drug might cause that, then that's a lack of understanding of the side effects of the drug or a lack of understanding of her performance.

Q I'm talking about at the time of hire.

A At the time of hire? No. Clearly she hasn't started

yet, so the premise is incorrect.

If she hadn't started, how would she know what her performance is?

Q That's right. She wouldn't have any reasonable expectation to believe that any side effects were going to affect her performance.

A At the time of hire, that would be correct.

Q So assuming that she discloses in her health inventory that she's taking the Topamax, but doesn't believe that it's going to affect her job performance, she has no other duties to disclose the use of Topamax, right?

A You know, I'm not an employment lawyer, but that would seem to make sense to me at the time of starting.

Q And if I understand what you've said so far, you think at the point she became aware that her performance was affected by the medication, then she might have a responsibility to disclose its use; is that correct?

A Yes.

Q Okay. Are you aware that Doctor Aronson had a conversation in November of 2008 with Doctors Wallace and Norcia about her use of Topamax?

A I know that she -- yes. I know that it was a

conversation. I don't recall what the date was.

Q Okay. Can you tell me what you know about the gist of that conversation?

A My understanding was that there was -- that there was a question put to Sarah, are you on any -- is there any kind of medical reasons or are you on any kind of medicines that would affect your performance as far as recognition, reaction, et cetera, and that's when -- either that's when it was disclosed that she was taking that or that's what triggered the thought for her to recognize that that was an issue. I don't remember when that was. You know, I wasn't there for the conversation, so that's the gist of what I can recall.

Q So the gist of what you recall is it was that conversation that triggered in Sarah's mind the possibility that maybe Topamax is affecting the job; is that accurate?

MR. BIXENSTINE: Objection.

A I think that the general question was, are you on any medications and what medications are you on, or you know -- again, I don't know. I don't know exactly what the question that was put to her was, and there was a discovery of that, but I don't know the exact question leading to that discovery, so I can't say.

Q Are you aware that shortly after that conversation, the Employee Assistance Program conducted an evaluation of Sarah?
A Yes.
Q And it was directly related to concerns about her use of Topamax; is that correct?
A Well, it was directly related to her performance. I can tell you that whenever we suspect there are performance issues in anybody, because the prevalence for medication abuse in anesthesia is so high, we have them go to the Employee Assistance Program. We've had other people who have -- because their performance has been not up to standards or not up to par or there's been a change, or whatever, we will trigger that mechanism early because we are concerned about our people.
Q And she was released back to work by the Employee Assistance Program, right?
A Correct.
Q What did you know about the terms under which she was released back to work?
A I have no knowledge.
Q Were you informed that EAP released her back to work?
A Yes.
Q Who informed you of it?

A I don't recall.
Q Did you know whether there was an evaluation done of her cognitive abilities?
A I would assume that was part and parcel of their evaluation, but again, I'm not aware of the specifics.
Q Did you understand that she was being referred into EAP to examine whether her cognitive abilities had been affected?
A That was my understanding, yes.
Q Did you then assume that if she was being released to work, that her cognitive abilities were satisfactory?
A I would assume that, yes.
Q So if Doctor Aronson gets referred to EAP based on a conversation about her performance during which the parties to the conversation talk about her use of Topamax, and then EAP says, we recognize no performance problems.
A In they recognize no performance problems in their testing assessment.
Q Correct?
A Nothing to do with the operating room? They do not --
Q Correct. Talking about her cognitive abilities as they have tested.

A Correct.

Q Do you believe that she had any responsibilities to have disclosed her use of Topamax to either Doctor Wallace or Doctor Norcia before the November conversation?

A Yes, I think she did. Because their assessment was such, it doesn't mean that it wasn't -- I mean, I think that there still is a duty to disclose anything that may affect your performance. Even though the end result was by some standardized cognitive test, psychological test that they use, doesn't necessarily mean that it didn't happen and doesn't necessarily mean that the potential wasn't there. So it's the potential we're talking about, not what the actual results are. And I'm not sure the actual results are that valid.

I mean, we've referred people there before who had performance problems, one fairly recently, and, you know, whatever test that they use may not be the same test that one uses in an operating room when you have somebody's life in your hands.

So the answer to your question is I think that that's -- whether or not it had anything to do is not relative to the disclosure process.

Q Your belief is that the relevant question is whether

the Topamax had the potential to effect her performance?

A That's correct.

Q And if Doctor Aronson were unaware of that potential, you believe she nevertheless should have reported to Doctor Wallace or Doctor Norcia that she was using Topamax?

A I think that it's a gray area here. I mean, I feel that people who take medications ought to know what their potential side effects are. And again, if they don't think it impairs them, then that's fine. But now they're entering into a new sphere where there's a whole different set of cognitive abilities and functions that need to happen that don't happen in, perhaps, other walks of life, so I think that the potential is out there and people need to be made aware of that.

And I'm not sure what the -- there's some sort of -- you know, I know that there's some sort of regulations written someplace to that effect. I don't know what they are. I can't quote them clearly. But it definitely states that it is something that ought to happen under the rules and regulations of whatever agency that promulgates those.

Q Now, you understood that when Doctors Norcia and Wallace wrote the letter that is Exhibit 1 and indicated that one of the reasons for extending Doctor Aronson's training was that under the category of professionalism, she failed to carry out her professional responsibility to notify them that she was taking Topamax; is that right?

MR. BIXENSTINE: Objection.

A To notify them that she was taking a drug that could impair her cognitive abilities.

Q Did you know it was Topamax?

A Yes.

Q So you knew that it was the reference to her not having disclosed the use of Topamax to them that caused them to write this portion of the letter?

A That portion of the letter, correct.

Q And you understood that this letter was a significant document in the context of her training and career, correct?

A It's significant in the sense that it was -- in the sense that it required her to have an extended period of training.

Q Did you know that Doctor Norcia had recommended against including the statement about professionalism in this letter?

MR. BIXENSTINE: Objection. Go ahead.

A I know we had discussions about that. I don't recall what Doctor Norcia's final judgement was, no.

Q You don't recall being in a meeting with you and Doctor Aronson and Doctor Norcia when the three of you were discussing specifically professionalism and whether it should be included in any statement about her performance?

A In any statement going forward, or this specific letter?

Q This specific letter.

A Again, I know that we had discussions about whether or not that would go forward in writing recommendations and in making recommendations to the Board, and I think that we decided that we would not go forward with that. But as far as this specific letter, I don't recall conversations regarding the letter, per se.

Q What do you mean when you were talking about not making a recommendation to the Board?

A Stating -- I didn't say that. I said recommendations to -- oh, State Medical Board, not the ABA.

Q Okay.

A I'm sorry I wasn't clear.

Q After Doctor Aronson received this January 7th letter that is Exhibit 1, she had communications with you about it, right?
A Correct, correct.
Q Do you recall telling her you thought that the way it had been handled was unconscionable?
A I don't think I would have ever used that word.
Q Do you deny using that word?
A I don't recall using the word. I don't think I would -- I don't think that was my feeling about that, so yes, I would deny using that word.
Q And Doctor Aronson, if she testified under oath that you used that word, she's lying under oath?
A I don't recall using the word. She may recall or it may have been a perception that I used that word. Can I go back and replay my conversations? No. But that's not my feeling about that letter now or then.
Q Residents are given in-training exams periodically, correct?
A Yes, sir.
Q Why are they given the exams?
A To mark their progress as far as understanding and retaining the scientific principles underlying giving anesthesia.
Q Do the exams serve to give the residents any

indication about the likelihood of passing their Board certification exams?

A The in-training exam is a fairly reasonable indicator of your performance on that and your progress on that on passing the written part of the examination.

Q What scores do you have to achieve to understand that you're likely to pass your Board exam?

A I don't recall the exact number, but they give a number related to how they score the test. It's not a percentage. It's a ordinal number of some sort. I just don't recall. But they give a number. They give sort of graphs about what you should be at each year if you're going to be progressing towards the successful passing of the test after you've done your residency.

Q Doctor Aronson had informed you that she wanted to be able to appeal the decision to extend her training, correct?

A Correct.

Q Were there any appeal mechanisms available to her?

A I'm sure there are through -- I mean, I don't know. I'm sure that there must be. There must be some sort of way to do that either through the hospital, per se, or the director of ACGME from the hospital or Anesthesia Board process, training process. I'm not

aware of them. I don't know the specifics.

Q Do you know whether she was given any appeal?

A I know that she contacted the ACGME. I know that she was in touch with Doctor Shuck about that. You would have to ask him.

Q Would it surprise you to learn that she was not given any formal appeal?

A Would it surprise me?

Q Yes.

MR. BIXENSTINE: By the hospital, you mean?

MR. GORDILLO: Correct.

A I would -- I don't know if I'm surprised or not. I know that she had asked about that. I assumed that if she asked about it that if there was an appeal process available, it would have been made available to her. Whether or not she was eligible based upon the criteria, I can't really speak.

Q Do you know whether there is any difference between a formal appeal and an informal appeal?

A I don't know.

Q If there is a difference, who would know?

A I assume it would be -- I would assume my residency directors would know about that, and I would assume Doctor Shuck would probably know about that.

Q At the time that Exhibit 1 was sent to Doctor Aronson, she had a job offer in Florida from Sheridan Healthcare. Were you aware of that?

A I was aware that she had a job offer. I don't know the exact timing. Yes, I was aware she had the job offer.

Q Did you do anything to assist her in getting that job?

A I recall having perhaps some discussions with them to assist her in retaining that after she was due to complete her extension. I don't recall if I wrote a letter before this letter came out to them or not. I mean, I fill out lots of forms for lots of residents, and resident who even were done 30 years ago. I still get forms to fill out to verify their training and verify their performance during the training, so I get five to ten forms a month. I don't recall what my timing with the Sheridan would have been.

Q Did you have any discussions with Doctor Norcia or Doctor Wallace about how the decision to extend her training might affect her ability to take the job offer that she received in Florida?

A I know that we were aware of that fact. I don't recall any specific discussions.

Q Do you recall whether Doctor Norcia or Doctor Wallace

expressed to you that they didn't think Sarah Aronson should begin working as an attending physician?

A At the time of January 2009?

Q Yes.

A Yes. I mean, clearly the letter states that. The letter states that she did not complete the last -- the previous six months satisfactorily, therefore she didn't -- in our judgement, needed to have an extension of her residency to do that. I mean, had they thought that she would be ready to go out as an attending, they would have given her a satisfactory.

Q And you were aware that the job offer she had was for a position as an attending physician, correct?

A Correct.

Q Do you know whether Doctors Norcia or Wallace were similarly aware?

A I'm sure they were. I mean, people don't go from one residency to another residency, so therefore it was as an attending physician.

Q So when this decision reflected by the January 7th letter was written, was the intent of Doctors Norcia and Wallace, and essentially UH, to prevent Doctor Aronson from being hired as an attending physician as of February of 2009?

MR. BIXENSTINE: Objection.

A No. That was not the intent. The intent was that it was felt that Doctor Aronson had not satisfactorily completed the previous six months of her residency training and to give her an opportunity to do so. It had nothing to do with a job offer that was or wasn't there.

Q Well, you didn't want her to work as an attending, right?

A We did not feel that she could -- we did not feel -- no. If she wanted to have quit at that time and go take up the job offer, that would be great, if they wanted to hire her based upon not completing an anesthesia residency.

We didn't feel at that period of her training that she had satisfactorily completed the prerequisite requirements of the previous six months. That's all that that letter says. That's all that that letter was intended to. If she wanted to say, okay, I've done my training, I haven't finished but I'm going to go take a job at Sheridan, that was her decision. Probably wouldn't have been a wise one, but the point of it is is that's not what the letter was written for.

Q Let me talk for a minute about the six-month window that's in the letter.

Doctor Aronson did not begin her program at the same time as the rest of her class, correct?

A Correct.

Q So she was essentially off cycle; is that a fair characterization?

A Sure.

Q How is a six-month evaluation period applied to a resident who was off cycle?

A I would assume -- and your question is probably better off asked of the resident directors because that's their job -- six months is six months. It really, you know, depends on when you start and the clock starts ticking.

Q Do you have any recollection of whether there was a specific rotation that Doctor Aronson had unsatisfactory performance which led to the January 7, 2009 letter?

A No.

Q The Residency Program has to send out evaluation of clinical competence for each of its residents in July and January, right?

A Again, details of the Residency Program, I leave to my program directors.

Q Were you aware of Doctor Aronson's application for a job with Sheridan Healthcorp in Maryland for a job

after her residency was completed?
A Yes.
Q Did you participate in assisting her getting that job?
A I filled out the necessary forms. I know I was in touch at one point with the Maryland Board of Medicine, so yes.
Q You said you were in touch with the Maryland Board of Medicine?
A Yes.
Q And how were you in touch with them?
A When I filled out the form, there was a question about the medication that she was on, and I answered that question for them. I don't remember the specific phrase. And the way I answered it, I also left out a word. I put medical instead of medical condition, so they got back in touch with me. I do remember that exchange.
Q Were the exchanges in writing?
A Could have been. I don't remember.
Q Do you remember having conversations with someone?
A I'm certain that there was a form that I filled out that was in writing. Whether they had a question on the form, either email or call me, I don't recall. I've had both forms of communication with respect to

Doctor Aronson's multiple applications to other places, so I don't recall specifically whether that was verbal or written to Maryland.

Q Did you speak with anyone else -- let me rephrase that.

Did you speak with anyone at Sheridan Healthcorp about the job?

A I don't think so. I think it was just the exchange with the Maryland State Board of Medicine.

Q You don't recall speaking with anyone at Peninsula, at the medical center?

A I recall -- I think it was an email form of communication with Peninsula. I do recall that name, but I don't recall speaking with anybody there, so it must have been a form.

Q What was the gist of the email communication?

A It was not email. It was perhaps a form. Perhaps I filled out an evaluation form.

Q Do you know whether anyone else at UH completed forms for her job application at Sheridan Healthcorp?

MR. BIXENSTINE: You mean Peninsula, the Maryland one?

MR. GORDILLO: Yes.

MR. BIXENSTINE: Because I get confused myself, because I thought the

original one was not in Maryland, but was also a Sheridan.

MR. GORDILLO: There's a Sheridan Healthcare in Florida and there's a Sheridan Healthcorp in Maryland.

MR. BIXENSTINE: I see.

A I do not know if anybody else was involved.

Q And were you aware that she had later applied for a job with Hamot in Erie?

A Yes.

Q Did you play any role in assisting her with that job application?

A Again, I'm sure I filled out anything that was sent to me based upon the fact that that's part of my responsibility. Do I recall specifically for Hamot? No. I had forms -- I had inquiries from Sheridan, from Hamot, from Easton, and from Springfield. Do I recall which was verbal and which was not? No, I don't.

Q Just to be clear, with respect to Hamot, do you recall any conversations you had with anyone at Hamot about Sarah Aronson's job?

A I did receive a phone call from a doctor up there. I called him back two or three days later. He wasn't in. We played phone tag for a bit, but I did

eventually get in touch with him.

Q Do you recall who that doctor was?

A I don't recall the name.

Q When you spoke, what was the gist of that conversation?

A It was a general evaluation type of thing, the same thing would have been -- I told him whatever I would have put down on paper.

Q Did you express any reservations about having Hamot hire Sarah Aronson?

A I don't recall the specifics about that. I do recall essentially putting out a form stating that she passed our residency and that she had had -- you know, no, I don't recall specifics of that.

Q Have you ever expressed to any prospective employer of Sarah Aronson reservations about hiring her?

A I think the final summary was that -- was that --

MR. BIXENSTINE: Excuse me.

Reservations regarding their hiring her?

MR. GORDILLO: Yes. Regarding the prospective employers hiring her.

MR. BIXENSTINE: Go ahead.

A I think that I put out that -- you know, I don't recall specifically what I said. I don't recall. I never checked the box that said, do not recommend. I

may have mentioned that there was -- she had a temporary medical condition or was on medication -- temporarily on medication for a condition that did affect her performance and caused her to prolong her residency, but that's all I remember. I never put down the unsatisfactory for that.

Q Did you ever express to any state licensing board any reservations about having Sarah licensed?

A Not that I can recall.

Q Let me talk for a minute about duty hours of the residents.

Who is responsible for scheduling the residents?

A That would probably be Doctor Wallace as far as the overall schedule month to month for a year at a time, more or less.

Q And who is responsible for tracking compliance with duty hour requirements?

A We pretty much self-report on that. We found that the residents -- you know, we don't have them punch in or punch out. We have a general knowledge of where they are based upon what their call hours are -- I mean what their call schedule is like. And we have them fill out a self-attestation form that they were either in compliance or not for that particular time. We've never really had many

problems with people violating duty hours, other than in the past when we asked them to come back for a lecture, if they were on call Tuesday and come back for lecture Wednesday afternoon, they were only gone nine hours instead of ten, so if that was a problem, we changed the date of the lecture for that.

As far as total number of hours in a week, I don't think we ever had any problems with that.

Q Other than the self-attestation form that you just mentioned and the scheduling, are there any other records that you're aware that are kept regarding duty hours?

A Not that I'm aware of, no.

Q In the SICU, do you know how long the typical call lasts?

A When you're on call in the SICU?

Q Yes.

A Typically it's 24 hours, 26 hours with rounds.

Q Do you have reason to observe how long the residents work typically when they're on call in the SICU?

A Yes. I mean, I attend the SICU. I know when they've been there for 24 hours, we generally conduct rounds to try to see the patients that that call person has been on first, assuming everybody else is stable enough, so that the call person is dismissed as early

as possible from rounds after the vital information is passed on about what happened to the patients that night.

We try to do it 26 hours. Sometimes it's 27 hours, but again, it's depending upon how critical the patients are and what types of communication need to happen to ensure safety for that patient.

Q Do you recall any personal observations of Doctor Aronson's work in the SICU during September and October of 2008?

A No.

Q Do you recall any discussions with Doctors Wallace or Norcia about her performance in the SICU during September and October of 2008?

A Do I recall any conversations? No. I'm not denying any conversations took place. I just don't recall them.

Q Doctor Aronson believes that the typical duty call -- I'm sorry. Start that one over.

Doctor Aronson believes that when she was on call in the SICU during September and October of 2008, her shifts were typically 28 to 30 hours. Do you disagree with that?

A I don't think that's typical. I'm not saying that it may not have happened if there was some particular

thing going on or crisis situation that may have occurred. Typically, no, that wouldn't be typical.

Q How many times a month do you try to keep the on-call schedule for a resident in the SICU?

A I don't make the call schedule, so I really couldn't tell you. Probably not -- certainly not more than one to three, and we probably try to get it not one to four, but that would be my --

Q Who's responsible for doing that?

A It would typically be the SICU attending staff. Doctor Hacker is chief of the SICU. I don't know if she was making the call schedules out at that time or if it was still a function of Doctor Rowbottom or Doctor Norcia.

Q You became aware that Doctor Aronson made a complaint to ACGME about the Residency Program, right?

A Yes, sir.

Q When did you become aware of that?

A Again, I don't have a recall for a specific date. I think that Doctor Shuck may have emailed me or told me or called me and made me aware. That would be the first I heard of it, but I don't recall the date.

Q That was my next question, how you learned about it. You may have learned about it from Doctor Shuck?

A I think so, from Doctor Shuck. Or I may have heard

about it from Doctor Aronson. She may have written or communicated that to me that she was going to. I don't recall.

Q The ACGME came out to do a site visit in July of 2009, right?

A Correct.

Q An ACGME representative met with Doctor Aronson to discuss her views on the program. Did you know about that?

A Yes.

Q Okay. How did you learn about it?

A Probably through Doctor Shuck.

Q Do you know how Doctor Shuck learned about it?

A I don't know.

Q Do you recall that ACGME asked for volunteers among the residents to share their views about the program?

A I know that there is a process that they do for the institution, and my understanding of that -- again, you'd best talk to Doctor Shuck about the specifics.

My understanding is that the residents sort of self-elect people, representatives to go talk to the ACGME, when there's an institutional review.

Q Do you know any of the details of how the ACGME came to speak specifically with Doctor Aronson?

A That's probably a question better answered by Doctor

Shuck.

Q Is your answer no?

A I'm not sure of the details, so I can't tell you.

Q Did anybody from the ACGME share with you the information that Doctor Aronson had conveyed to the ACGME representative in July 2008?

A No.

Q You just knew that she had met with someone. You didn't know what she had said?

A Correct.

Q Were you consulted in any way about determining when the completion date would be for Sarah Aronson's residency program?

A Was I asked my opinion or was I informed?

Q Were you asked your opinion?

A No.

Q Were you informed?

A Yes. I was informed. There was discussion going on about that. I mean, you know, six months is six months, as far as extension, and once it was determined that she had satisfied the requirements, was I informed of what that specific date was or how many vacation days she had left at the end? No, I don't know those details.

Q Did you know that she was given a contract to work

through August 31st of 2009?

A I'm not disputing it. I don't know the details of that.

Q Did you know whether there was a decision made to consider her work completed before December 31, 2009?

A I'm sorry. I'm not sure I follow that question.

Q Did you --

A She was given a contract through August 31, 2009, so why would she have been considered to work through December 2009?

Q That wasn't my question.

A That's why I'm saying I don't understand your question.

Q Fair enough.

Did you know whether a decision was made to consider her residency completed before August 31st of 2009?

A I'm not aware.

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(Thereupon, Exhibit 2 was marked for the purpose of identification.)

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Q (By Mr. Gordillo) I'm going to hand you a document marked as Exhibit 2. Please take all the time you'd like to look it over and let me know when you've had

an adequate opportunity to review it.

A All this?

Q Yes.

A Okay.

Q Does that document refresh your memory at all about when Doctor Aronson was released from the Residency Program?

A Apparently the end of August, 27th to be specific.

Q And you see that the decision was made apparently on August 27th, but it followed an email from Sarah Aronson -- I'm looking at the second page on August 27th, right?

A Yes.

Q Do you know why the decision was made on the same day that she sent this email to --

A No. You would have to ask Doctor Norcia. He's the one who authored that.

Q Okay. You were cc'd on the email, right?

Did you have any conversation with him about this decision?

A I may have. I don't recall specifics. Yes, I was cc'd on this email. I get cc'd on about 140 emails a day.

Q How many times to residents get released from the program before they're scheduled?

A Lots of resident leave days before they're scheduled. Depends on what their vacation time is, what kinds of time they have taken off for other things.

Again, those are the details of the residents that I really don't keep track of, especially a year and a half later.

Q How many residents get to leave early because they say, I think I completed my requirements two months early?

A That's unusual. Two months earlier? We never had that kind of issue. I mean, that's -- I remember this chain of emails. I think it's a matter of perspective on this and what the timing is. There's probably some misunderstanding about whether or not that was two months early.

Q Do you know who Doctor Gaither is?

A Yes. Shayla Gaither?

Q Yes.

A Yes.

Q She was a resident at the same time as Sarah Aronson, right?

A Correct.

Q Graduated the program in July 2009, I think, right?

A I think so, yes.

Q Do you know, is she certified, passed her Board yet?

A I don't know her status, no.
Q Doctor McFarland, do you know Doctor McFarland?
A Yes.
Q Doctor McFarland was a chief resident for a time during the residency, right?
A Yes.
Q Also at the same time as Doctor Aronson was there, right?
A Correct.
Q Do you know if Doctor McFarland has been Board certified?
A Yes, I do. She is.
Q Do you know when that happened?
A I mean, I know she just passed her orals. I don't know when she took her written, if she did a fellowship. Sometimes people delay taking their Boards until after their fellowship year. I know she just passed her orals, which means she passed her written at some point before that. I don't know when.
Q And Doctor Williams was part of the Residency Program with Sarah Aronson, right?
A Which Doctor Williams?
Q Fair question.
A The answer to the question is yes, because there was

two, so --

Q Erin Williams.

A Yes.

Q Do you know if Erin Williams is certified?

A Yes, she is.

Q Do you know when she became certified?

A No, I don't. I know she texted me when that happened, when she got her results back. I don't know when. Doctor Williams did a year of fellowship, so she might not have taken her Boards right away.

Q As you sit here today, are you aware of any conduct by Doctor Aronson during her Residency Program that merited terminating her employment?

A That merited terminating her employment?

Q Yes.

A No.

Q Are you aware of any jobs that she should have taken since February of 2009? That she should have taken and didn't take?

MR. BIXENSTINE: I'm sorry?

Q Are you aware of any jobs that she should have taken and didn't take since February of 2009?

MR. BIXENSTINE: Objection.

A I don't understand the question. How would I know of any jobs she should have taken and didn't take?

Q If your answer to my question is no, that's okay.
A No.
Q Did you know that Doctor Aronson had been scheduled for an ICU rotation at the end of her residency?
A I was aware that she did one, yes.
Q Did you know that she was released from completing that rotation?
A I think we discussed it. She left her residency on the day that -- you mean released while she was doing it or from doing it?
Q Excused from doing it.
A Yes. I vaguely remember that, yes.
Q Were you part of the decision-making process that led to that?
A No.
Q How did you become aware that it had happened?
A As it happened or after it happened? I don't know. Somebody -- it must have come up in discussion or I must have been informed. I honestly don't recall the details.
Q In January of 2009, did you believe that Doctor Aronson's alleged performance problems were due to the potential drug side effect?
A Was I aware or --
Q Did you think?

A Did I think?
Q Yes.
A When the letter was written?
Q Yes.
A I don't know if I -- I don't know, because we hadn't had an opportunity to see what she was like off this medication.

Could they have been contributory? Certainly. Do I have an opinion based upon at that time? No.

Q Did you subsequently form an opinion?
A Sure.
Q When did you come to that opinion?
A Are you asking me for the hour and the minute?
Q To the best of your recollection, whatever you can do.
A I mean, clearly it was thought that she had improved her ability to react to situations, seemed to have a clearer thought process afterwards. Did that account for everything? I don't know. But it certainly seemed to help.
Q As you sit here today, do you believe that her performance was affected by her use of Topamax?
A I think -- you know, I think it certainly could have been. I can't tell you. I mean, again, we're not talking about a test that we can grade and look at

before and after. We're looking at subjective evaluations by multiple people over periods of time, and you have to sort of form an opinion based upon what those are.

Q And you've informed licensing boards that she had extended training based on a medical condition related to her use of Topamax?

A Based upon the drugs she was taking and that she seemed to improve when she was off, like I said, yes.

Q But you weren't sure whether that was what caused her problems?

A As a scientist, am I absolutely convinced? No. Did I think it helped? I said it seemed to improve. Yes, it helped.

Q You are willing to accept that as a hypothesis?

A Correct.

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(Thereupon, Exhibit 3 was marked for the purpose of identification.)

- - - -

Q (By Mr. Gordillo) I'm going to hand you a document marked as Exhibit 3. These are emails between Sarah Aronson and Jerry Shuck, so I don't necessarily expect you to recognize them, but please take all the time you'd like to look them over and let me know

when you've had an adequate opportunity to review it.

A Okay.

Q As you look at this document, do you recall that you had a meeting with Doctor Aronson and Doctor Norcia in January?

A Again, do I recall that specific meeting? No. But I'm sure that I did.

Q Okay. And she -- you see in the bottom half of the document where she writes that you had deferred to the assessment of the program directors and had little to say otherwise. Do you see that?

A That's what she put. Yes, I see that.

Q Do you believe that's an accurate representation of what happened in this January meeting?

A You know, I mean, I think that generally what my stance would have been that -- again, I'm going to state that I leave the evaluation process to the program directors. I have input. There's no question that I'm consulted about it, but it's generally an assessment that they have with some input from me. Can I overrule both of them? Probably not. Would I want to? Probably not.

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(Thereupon, Exhibit 4 was marked for the purpose of identification.)

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Q (By Mr. Gordillo) Handing you a document marked as Exhibit 4, please take all the time you'd like to look it over and let me know when you've had an adequate opportunity to review it.

Have you had time to review the document?

A Yes, I have.

Q Do you recognize it?

A Yes, I do.

Q Can you tell me what it is, please?

A It's an email from Sarah to me detailing issues that she had with what she felt was unfair evaluation by Doctor Wallace, and to some extent by Doctor Norcia, and telling me about the process that she wanted to go through to try to appeal this, and that's pretty much it.

Q And you write back that you were going to discuss it with Doctors Wallace and Norcia, right?

A Yes, I did.

Q Did you do that?

A I'm sure I did.

Q Did you share this letter specifically with them, this letter being the second and third pages?

A I don't know. I don't think I sent them the letter. I certainly would have talked about what the contents

were with them. I don't recall whether I sent them that specific letter or not.

Q On the second page of the exhibit on the second full paragraph, Doctor Aronson wrote to you that Doctor Wallace could not cite a single example to her of cognitive impairment when she asked him directly. Do you see that?

A Yes.

Q As I understood your testimony before, this is an issue that you would be concerned about; is that fair?

A Correct.

Q Did you specifically ask him about the issue that she was raising with respect to his not providing her with any specific examples of cognitive impairment?

A Yes, I did.

Q Do you recall what his response to that was?

A He had a different recollection of that conversation than she did.

Q Did he tell you what specific examples he gave her?

A I don't know. I can't recall. But he told me some specific examples, but I don't recollect his -- I don't know the details of his conversation with her. I would assume that that would be a good question to ask him tomorrow. I mean, I wasn't there for the

conversation.

Q But I want to know what he told you about the conversation.

A He told me that he mentioned them.

Q Did you discuss with Doctor Wallace whether he had discussed with Doctor Norcia the decision to take Doctor Aronson out of work to determine her fitness for duty?

A No. I don't recall that. I may have. I may not have. I just don't recall saying those specific words.

Q Doctor Aronson goes on to write about the inclusion of unprofessional behavior in the report to the ABA. Do you see that?

A Mm-hmm.

Q And she writes that Doctor Norcia had expressed willingness to remove that citation from the report when he met with you and her, right?

MR. BIXENSTINE: You're asking him what she wrote?

MR. GORDILLO: Yes.

A Yes.

Q Do you recall that to be an accurate recitation of what happened?

A Again, my recollection is that we weren't going to

use unprofessional behavior. We weren't going to question her professionalism when we were going to fill out forms for her future employment. As far as not mentioning it on that ABA form, I don't recall that. I don't recall him saying that.

Q In the next paragraph, she writes that Doctor Norcia -- about in the middle of the paragraph -- had an open mind regarding her status. And then two weeks later entered a statement of her unsatisfactory performance and need for remediation.

Do you see where she wrote that?

A Yes.

Q And then she wrote that Norcia indicated to her that the fact that she consulted an attorney influenced that report. Do you see that?

A Yes.

Q Did you discuss this allegation with Doctor Norcia?

A I don't recall.

Q Did you respond back to Doctor Aronson about this?

A About the letter?

Q About the report that --

A The attorney?

Q Right.

A I don't recall. I don't think I would have. I don't recall making that specific -- discussing that

specific detail.

Q Did that statement that she wrote concern you?

A No. I mean, I was not surprised that she had consulted an attorney, so it didn't concern me.

Q Well, the fact -- I'm not talking about the fact that she consulted an attorney. I am talking about the fact that she writes Norcia indicated that her consulting an attorney influenced his report.

A I would have to know how it influenced his report to know whether or not it was a concern or not. You're asking me to try to interpret what Doctor Norcia was thinking, and I can't do that.

Q Well, you could have asked him, right?

A I could have asked him, but -- I may have asked him. I don't recall. It's just not a detail that I recall doing.

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(Thereupon, Exhibit 5 was marked for the purpose of identification.)

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Q (By Mr. Gordillo) I handed you a document marked as Exhibit 5. Take all the time you'd like to look it over and let me know when you've had an adequate opportunity to review it.

A Okay.

Q Again, this is an email from Sarah Aronson to Jerry Shuck with a cc to you. Do you see that?

A Yes.

Q And she writes that she had an opportunity to meet with you and summarizes that you felt you had delegated the management of the Residency Training Program to Doctors Wallace and Norcia and will not take any active steps to influence the process that has occurred to date.

Do you see where she wrote that?

A Yes.

Q Do you believe that to be accurate?

A Yes. Pretty much consistent with what we talked about all morning.

Q And she then goes on to write that you agreed that an objective review or appeal may be the only way to resolve the issue. Do you see that?

A I think my thought process was she was free to make it an appeal.

Q And then she writes that you express support of submitting a formal complaint to ACGME if that was the only way to secure due process. Do you see that?

A Again, if she says -- the gist of the conversation probably went something along these lines, that if she wanted to have an appeal and she feels that would

be fair, I didn't try to discourage her from doing what she felt was necessary.

Q Is it fair to say that she's portrayed a reasonably accurate summary of the conversation that the two of you had?

A To the extent that I just answered the question. I did not encourage her to do that.

If you're implying that I thought that she was handed a raw deal and the only way she was going to get out of this was to make an appeal, that's not what the conversation was about. The conversation was about, you have a right to appeal and you have a right to an objective analysis of it and you can go ahead and do that.

MR. GORDILLO: That's all I have for you today. Thanks very much.

THE WITNESS: Thank you.

MR. BIXENSTINE: I'd like to ask one question.

When you say right to appeal here, appeal to whom? Did you have any specific notion of who the appeal was to go to?

THE WITNESS: No.

MR. GORDILLO: Thank you.

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(Deposition concluded at 11:20 a.m.)

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State of Ohio,)
)SS: CERTIFICATE
County of Cuyahoga,)

I, Mary C. Peck, a Notary Public within and for the State aforesaid, duly commissioned and qualified, do hereby certify that the above-named HOWARD NEARMAN, M.D. was by me, before the giving of his deposition, first duly sworn to testify the truth, the whole truth, and nothing but the truth;

That the deposition as above set forth was reduced to writing by me by means of stenotypy, and was later transcribed upon a computer by me;

That the said deposition was taken in all respects pursuant to the stipulations of counsel herein contained; that the foregoing is the deposition given at said time and place by said HOWARD NEARMAN;

That I am not a relative or attorney of either party or otherwise interested in the event of this action.

That I am not nor is the court reporting firm with which I am affiliated under a contract as defined by Civil Rule 28(D).

IN WITNESS WHEREOF, I hereunto set my hand and seal of office, at Cleveland, Ohio this 10th day of January, A.D. 2011.

_____

Mary C. Peck, Notary Public

My commission expires December 30, 2011